

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO.1430 OF 2005

Mohammad Aslam Shaikh

...Appellant

Vs.

The State of Maharashtra

...Respondent

Shri B.P. Pandey for the Appellant.

Shri S.N. Gawade, A.G.P. for the Respondent.

CORAM : A. S. OKA, J.

DATE : JULY 27, 2006.

P.C.:

1. Admit. The learned A.G.P. waives service for the Respondent. Taken up for hearing forthwith.

2. The Appellant is the original Plaintiff who filed a suit for declaration and injunction. The Appellant asserted in the plaint that a social club is being conducted in the premises subject matter of the suit. The suit was filed on the basis of alleged threats given by a Police Constable to the effect that if within forty-eight hours the Appellant fails to remove his furniture and fixtures from the suit premises and fails to close the said club, the suit premises will be sealed. By the impugned judgment and order, the learned Trial Judge rejected the plaint. The learned Trial Judge also declined to grant leave

under sub-section 2 of section 80 of the Code of Civil Procedure, 1908. The learned Judge also directed the Registrar of the City Civil Court to file appropriate criminal complaint against the Appellant in appropriate court for making false statement to the court. The learned Judge directed the Appellant to pay compensatory costs of Rs.25,000/-. This order was passed even before notice was issued to the Respondent. The learned Judge noted that the plaint has been affirmed on 20th April, 2005 and in paragraph No.24 of the plaint it was asserted that the constables visited the suit premises on 21st April, 2005.

3. The learned Advocate appearing for the Appellant has tendered affidavit of the Appellant. The affidavit is taken on record and marked "X" for identification. In the said affidavit the Appellant has stated that in paragraph No.24 of the plaint there is a typographical error and instead of 19th April, 2005 the date is incorrectly typed as 21st April, 2005. He has stated that the said error is a bonafide error. He has also stated that he has stopped conducting a social club in the suit premises. He has

prayed that impugned order may be set aside and the

Appellant may be allowed to withdraw the suit.

4. I have heard the learned Counsel appearing for the parties. I have perused the plaint. If assertions made in paragraph No.23 of the plaint are seen, it appears obvious to me that there is a typographical mistake while mentioning the date in paragraph No.24 of the plaint. In my view, while considering the prayer for grant of leave under sub-section 2 of section 80 of the said Code, the learned Trial Judge could not have jumped to the conclusion that a false statement has been made by the Appellant on oath. The learned Judge did not give any opportunity to the Appellant to explain the statement made in paragraph No.24. The finding of the learned Judge that the pleading of the Appellant was concocted is totally uncalled for. After refusing the leave under sub-section 2 of section 80 of the said Code, there was no occasion for the learned Trial Judge to reject the plaint as the plaint could not have been treated as validly filed unless the leave was granted. The direction given to file appropriate criminal complaint is not at all justified. Consequently,

order for payment of compensatory costs will have to
be set aside.

5. The statements which are made in the affidavit
of the Appellant which is marked "X" for
identification are accepted. In view of the said
statements following order is passed:

(i) The impugned judgment and order dated 06th
July, 2005 is quashed and set aside. Leave is
granted under section 80(2) of the Code of
Civil Procedure, 1908 to file the suit.

(ii) The suit is dismissed as withdrawn.

(iii) There will be no orders as to costs through
out.

(iv) Appeal is disposed of in above terms.

JUDGE